

REMARKS / ARGUMENTS

In the above-mentioned, final Office Action, all of the pending claims, claims 1, 5-15, and 18-24, were rejected. Claims 1, 5-14, and 21-23 (interpreted as all of the pending claims) were rejected under Section 102(b) over Eglan. Additionally, claims 1 and 15 were rejected under Section 112, first paragraph, for stating therein that historical indicia includes indicia of historical demand. Claims 1 and 15 were further rejected under Section 112, second paragraph, for recitations in lines 13 and 10, respectively, that lack antecedent basis.

Responsive to the rejections of the claims, independent claims 1 and 15 have been amended, as set forth herein, in manners believed better to distinguish the invention of the present application over the cited reference of Eglan. Additional amendments made to claims 1 and 15 are believed to overcome the Section 112, rejections thereof.

With respect to the Section 112, first paragraph, rejection, the terms “demand for” is substituted with “sales of”. In addition to the section (page 11, lines 9 and following) of the specification noted by the Examiner, page 4, lines 25 and following also provide support for the substitute recitations. Lines 15 and 13 of claims 1 and 15 are further amended to recite terminology consistent to the just-noted amendments.

Support for the recitations in claims 1 and 15 of “the demand based, at least in part, upon indications of inquiries of availability” is found, e.g., on page 9, line – page 10, line 2.

The Applicants assert that Eglan fails to disclose such structure or methodology, as now-recited. In the cited portions of Eglan, i.e., the abstract and paragraphs [0058] and [0099], request for a song and the number of times a particular content file has been purchased and downloaded are mentioned. No mention is made in these cited sections of basing demand upon indications of inquiries of availability of content.

Note is made of paragraph [0122] of Eglan. A measure of change in demand is noted, and the paragraph states that the quality of the item, the popularity of the item as measured by third parties, reviews of an item, and number of times an item has been viewed on a dynamic pricing systems amongst factors that are useable to modify a price basis.

The Applicants further assert that this disclosure is also different than the recitation of the demand based upon indications of inquiries of availability. For reasons analogous to the reasons for which the Examiner asserted that historical demand and historical sales are not equivalent, demand based upon indications of inquiries of availability of is not the equivalent to the number of times an item has been viewed. Viewing of an item not only is different than an inquiry of availability of content, but, further, an inquiry of availability is believed to be an actual indication of a content consumer's demand for content whereas mere viewing of an item might well have no bearing on the content consumer's demand for an item.

Because the remaining dependent claims include all of the limitations of their respective parent claims, these claims are believed to be distinguishable over Eglan for the same reasons as those given with respect to their parent claims.

Accordingly, in light of the foregoing, independent claims 1 and 15, and the remaining dependent claims dependent thereon, are believed to be in condition for allowance. Reexamination and reconsideration for allowance is respectfully requested. Such early action is earnestly solicited.

Respectfully submitted,

/Robert H. Kelly/

Robert H. Kelly
Reg. No. 33,922

KELLY & KRAUSE, L.P.
6600 LBJ Freeway, Suite 275
Dallas, Texas 75240
Telephone: (214) 446-6684
Fax: (214) 446-6692
robert.kelly@kelly-krause.com